

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICKY PATU,

Plaintiff,

v.

MARGARET GILBERT, et al.,

Defendants.

CASE NO. C15-1293-JCC-MAT

REPORT AND RECOMMENDATION

Plaintiff Ricky Patu, who is currently incarcerated at Monroe Correctional Complex, filed an application to proceed *in forma pauperis* (“IFP”) with a civil rights complaint brought under 42 U.S.C. § 1983. (Dkts. 1 & 7.) He alleges the named defendants violated his constitutional rights by denying his requests for a transfer to a medium or minimum security unit.

On September 17, 2015, the Court issued an order to show cause. (Dkt. 8.) The Court noted that, pursuant to 28 U.S.C. § 1915(g), a prisoner may not proceed IFP in a civil action if he or she has, on three or more prior occasions, brought civil actions that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. The Court

1 further noted that plaintiff had previously brought at least three cases that had been dismissed as
2 frivolous or for failure to state a claim upon which relief may be granted. (Dkt. 8 (citing *Patu v.*
3 *Albert*, C14-0765-MJP (Dkt. 13); *Patu v. Lee*, C15-5332-RJB (Dkt. 13); *Patu v. Albert*, C15-
4 0722-RSM (Dkt. 10); *Patu v. Bennett*, C15-0775-JCC (Dkt. 16).))

5 Because there was no suggestion that the imminent danger standard was satisfied, the
6 Court concluded that plaintiff was ineligible to proceed with this lawsuit without paying the
7 \$400.00 filing fee. (Dkt. 8 at 2.) The Court, therefore, ordered plaintiff to show, by October 15,
8 2015, why his IFP application should not be denied, or to pay the filing fee by that same date.
9 (*Id.* at 3.) The Court also notified plaintiff that failure to comply with the Court's directive
10 would be construed as consent to dismissal of this action without prejudice for failure pay the
11 filing fee. (*Id.*)

12 To date, plaintiff has not responded to the Court's Order to Show Cause. He has not paid
13 the filing fee or otherwise demonstrated that he is not disqualified under § 1915(g) from
14 proceeding IFP. *See Andrews v. King*, 398 F.3d 1113, 1120 (9th Cir. 2005) (“[O]nce a prisoner
15 has been placed on notice of the potential disqualification under § 1915(g) by either the district
16 court or the defendant, the prisoner bears the ultimate burden of persuading the court that §
17 1915(g) does not preclude IFP status.”). Accordingly, the Court recommends that plaintiff's IFP
18 application (Dkts. 1 & 7) be DENIED and this action be DISMISSED without prejudice for
19 failure to pay the filing fee. *See* 28 U.S.C. §§ 1914 and 1915. A proposed order accompanies
20 this Report and Recommendation.

21 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
22 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
23 and Recommendation is signed. Failure to file objections within the specified time may affect

1 your right to appeal. Objections should be noted for consideration on the District Judge's
2 motions calendar for the third Friday after they are filed. Responses to objections may be filed
3 within **fourteen (14)** days after service of objections. If no timely objections are filed, the matter
4 will be ready for consideration by the District Judge on **November 20, 2015**.

5 DATED this 26th day of October, 2015.

6
7 
8 Mary Alice Theiler
United States Magistrate Judge